IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.Rev.Pet.No. 2965 of 2007()

CRA.608/2006 of III ADDL.SESSIONS COURT, KOLLAM
CC.973/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

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REVN. PETITIONER: APPELLANT/ACCUSED:

RETNAMMA, AGED 54 YEARS,
SREENIVAS, THIRUMULLAVARAM P.O., KOLLAM.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS: RESPONDENTS/COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. G. SUDHAKARAN,
NISHA BHAVAN, KANNIMEL CHERRY, KAVANAD P.O.,
KOLLAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2965 OF 2007

Dated this the 9th day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.973/2003 on the file of the J.F.C.M.-II, Kollam challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. The defence raised by the

revision petitioner was that he had no transaction at all with the complainant and that the transaction was really with one Asokan with whom he had entrusted the cheque in question and this aspect of his defence was spoken to by DW1 and according to the revision petitioner DW1 has been disbelieved by the court below merely for the reason that he is related to the accused.

4. If the case of the revision petitioner is that the cheque in question was entrusted with Asokan with whom alone he had transaction and that the complainant is a stranger to the transaction, one would have expected him to examine Asokan as a witness. He was not examined. That apart, one would have expected him to issue at least a notice to Asokan informing him that he had misused the cheque entrusted with him, by handing over the same to the complainant without the consent or knowledge of the revision petitioner. That was also not done. This, coupled with the fact that he did not even choose to send a reply to the statutory notice constitutes sufficient grounds to repel the defence developed only at the stage of evidence. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against

the petitioner.

5. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided she complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 2nd respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.1,25,000/- (Rupees one lakh and twenty five thousand only) within four months from today, then she need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, she shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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